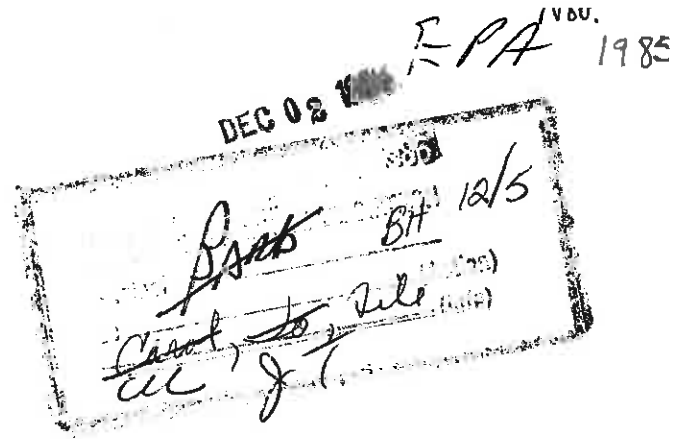


BEFORE THE DEPARTMENT OF HEALTH
DIVISION OF ADMINISTRATION

STATE OF COLORADO

Case No. 85-11



PETITION FOR IMPOSITION FOR CIVIL PENALTY

IN THE MATTER OF THE ADJUDICATORY HEARING ON THE
OCTOBER 18, 1985 NOTICE OF VIOLATION AND CEASE
AND DESIST ORDER ISSUED TO AMAX INC., CLIMAX
MOLYBDENUM COMPANY PERMIT NO. CO-0000248

TO: Gary G. Broetzman
Acting Designee of the Executive Director
of the Colorado Department of Health

This Petition for Imposition of Civil Penalty ("petition") is addressed to you, pursuant to section 25-8-608(2), C.R.S. (1982), in your capacity as acting designee of the Executive Director of the Colorado Department of Health. You are authorized thereby to determine civil penalties upon application of the Division of Administration of the Colorado Department of Health. Authority to apply for imposition of a civil penalty in this matter has been delegated to me by the Executive Director of the Department.

1. Climax Molybdenum Company ("Climax") owns and operates a molybdenum mine and mill ("the facility") located at Climax, in Summit and Lake Counties, State of Colorado. Climax is owned by AMAX Inc.

2. In conjunction with the facility, Climax operates a wastewater treatment system ("the treatment system") which is a system that manages water from several different sources. Discharge from the treatment system is authorized under the terms and conditions of Colorado Discharge Permit System permit No. CO-0000248 ("the permit").

3. The permit specifies effluent limitations which are to be met at all times except for the time when a snowmelt bypass is occurring, whereby other limits apply. The period for snowmelt bypass, specified in the permit, is any contiguous 60 days beginning not earlier than May 1 and ending not later than July 31.

4. By correspondence dated February 21, 1985 from Climax, the Water Quality Control Division ("the division") was informed that Climax planned to begin what Climax characterized as an emergency non-snowmelt bypass on March 4, 1985. Climax contended that part II, A.2(4) of the permit provided authorization for the non-snowmelt bypass. Said discharge was initiated on March 4, 1985 and continued through June 2, 1985. The Division did not approve the non-snowmelt bypass at any time.

5. On October 18, 1985, the Division issued a Notice of Violation ("Notice") and Cease and Desist Order ("Order") to Climax for violating its permit. The Notice and Order are attached hereto as Exhibit A, and incorporated herein by reference.

6. On November 15, 1985, Climax filed an Answer and a Request for Hearing on the October 18, 1985 Notice and Order. For its answer, Climax denied that it had violated its permit. Its answer and request for hearing are attached hereto as Exhibit B and incorporated herein by reference.

7. On October 8, 1986 the Division and Climax entered into an Agreement, Stipulation, and Order ("Agreement" and "Order"), pursuant to which the parties agreed that the Division would petition for the imposition of a \$30,000 civil penalty ("Penalty") against Climax for the October 18, 1985 Notice and Order. A copy of the Agreement and Order is attached hereto as Exhibit C and incorporated herein by reference.

8. In addition, the Division requests that you suspend the entire penalty pursuant to the terms specified in paragraph 17 of the Agreement and Order.

9. Pursuant to the terms of the Agreement and Order Climax agreed to withdraw its request for hearing and the Division agreed that the Agreement and Order resolved the Notice and Order issued on October 18, 1985, and that no further enforcement action will be taken thereon except as provided for in paragraph 17 of the Agreement and Order.

10. Climax further agreed, in connection with the Notice and Order, to do the work as described in paragraph 13 of the

Agreement and Order, and each of its subparagraphs.

11. Climax estimates that it may expend as much as \$1.6 million in connection with work and construction associated with complying with paragraph 13 of the Agreement and Order.

12. Pursuant to the terms of the agreement, Climax agreed to do additional work as specified in paragraph 16 of the Agreement and Order, and each of its subparagraphs, which work is unrelated to matters included in the Notice and Order and is in consideration of the civil penalty.

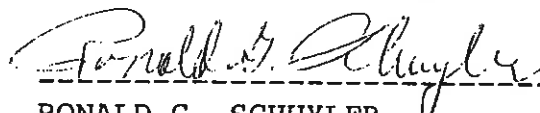
13. Climax estimates cost involved in complying with paragraph 16 of the Agreement and Order are \$229,600.

PENALTY RECOMMENDATION

On the basis of the foregoing, the Division recommends that you now impose a civil penalty of \$30,000 against AMAX Inc., which amount shall be suspended based upon the conditions set forth in paragraph 8 of this Petition.

DATED this 14th day of October, 1986.

COLORADO DEPARTMENT OF HEALTH
DIVISION OF ADMINISTRATION



RONALD G. SCHUYLER
Acting Director
Water Quality Control Division

AG Alpha No. HL WA HXQS
AG File No. CNR8605316/1SC

BEFORE THE DEPARTMENT OF HEALTH

DIVISION OF ADMINISTRATION

STATE OF COLORADO

Case No. 85-11

AGREEMENT, STIPULATION, AND ORDER

IN THE MATTER OF THE ADJUDICATORY HEARING ON THE OCTOBER 18, 1985,
NOTICE OF VIOLATION AND CEASE AND DESIST ORDER ISSUED TO AMAX
INC., CLIMAX MOLYBDENUM COMPANY PERMIT NO. CO-0000248.

Ronald G. Schuyler, Acting Director of and on behalf of the Water Quality Control Division of the Colorado Department of Health, and Ralph M. Barnett, Vice President in charge of Mines, AMAX, Inc. by and through Richard O. Austermann, counsel for AMAX, Climax, do hereby stipulate and agree as follows:

1. The Water Quality Control Division ("Division"), a section within the Division of Administration of the Colorado Department of Health ("the Department"), has primary responsibility pursuant to sections 25-8-301 to 308, C.R.S. (1982) to enforce the provisions of the Water Quality Control Act, sections 25-8-101 to 703, C.R.S. (1982 & 1985 Supp.).

2. Climax Molybdenum Company ("Climax") owns and operates a molybdenum mine and mill ("the facility") located at Climax, in Summit and Lake Counties, State of Colorado. Climax is owned by AMAX Inc.

3. In conjunction with the facility, Climax operates a wastewater treatment system ("the treatment system") which is a system that manages water from several different sources.

4. The wastewater treatment system ultimately discharges to the East Fork of Tenmile Creek ("the Creek") and such discharge is authorized under the terms and conditions of Colorado Discharge Permit System permit number CO-0000248 ("the permit"), which was issued on December 23, 1983 and is scheduled to expire

on September 30, 1988.

5. The permit specifies effluent limitations which are to be met at all times except for the time period when a snowmelt bypass is occurring, whereby other limits apply. The snowmelt bypass is authorized under the permit and consists of direct discharge from the tailing pond to the creek, thus bypassing the plant. The time period for snowmelt bypass is specified in the permit as any contiguous 60 days beginning not earlier than May 1 and ending not later than July 31.

6. In correspondence dated February 21, 1985 from Climax, the Division was informed that Climax planned to begin what Climax characterized as an emergency non-snowmelt bypass on March 4, 1985. Climax contended that part II.A.2.c(4) of the permit provided authorization for the non-snowmelt bypass. Said discharge was initiated on March 4, 1985 and continued through June 2, 1985. The Division did not approve the non-snowmelt bypass at any time.

7. In the February 21, 1985 correspondence, Climax further stated that the treatment system contained a volume of water above average and attributed this to decreased consumptive water use as a result of reduced mill processing, introduction of the McNulty Creek drainage into the treatment system and an increased volume in underground mine water, as the result of above average precipitation.

8. On October 18, 1985, the Division issued a Notice of Violation ("Notice") and Cease and Desist Order ("Order") to Climax for violating its permit. The Notice and Order are attached hereto as exhibit A, and incorporated herein by reference.

9. The Division alleged that the information contained in paragraph 7 constituted a process modification, according to the permit and required that AMAX submit a new permit application unless the process modification would not result in effluent limitation violations. To date, Climax has not submitted a permit application for what the Division terms a process modification, as described in paragraph 7, and has denied that a process modification has occurred.

10. On November 15, 1985, Climax filed an answer and a request for a hearing on the Notice and Order. For its answer, Climax denied that it had violated its permit. Its answer and request for a hearing are attached as exhibit B and incorporated herein by reference.

11. In consideration of the mutual promises set forth in this Agreement, Stipulation, and Order, Climax agrees to withdraw its request for a hearing on the October 18, 1985 Notice and Order, and the Division agrees that this Agreement, Stipulation, and Order resolves the Notice and Order issued for the non-snowmelt bypass of spring, 1985, and that no further enforcement action will be taken thereon except as provided in paragraph 17 below.

12. By entering into this Agreement, Stipulation, and Order, Climax does not admit or deny any of the allegations contained in exhibit A.

13. In connection with the matters described in the Notice and Order, Climax agrees to do the work as described in this paragraph. To the extent this paragraph modifies the permit, this paragraph will supercede those permit conditions for the term of this Agreement, Stipulation, and Order. All other terms and conditions of the permit remain in full force and effect.

a. During the term of this Agreement, Stipulation, and Order, the Climax demonstration project, which was addressed in the Division's letters dated November 21, 1985, February 5, 1986 and March 12, 1986, remains in effect to the extent that this Agreement, Stipulation, and Order is not inconsistent herewith.

b. By October 1, 1987, Climax will complete modification of the treatment system. During the term of this agreement and order, Climax agrees to optimally manage the treatment system so as to minimize the need for "non-snowmelt bypass" which is addressed in Part II.A.2.c(4) of the permit. A part of the optimal management will be to maximize the volume of water released during the snowmelt bypass, consistent with mill operational requirements and permit management requirements, so as to minimize the possibility of a non-snowmelt bypass. Climax shall be entitled to reduce its discharge rate to 2,000 gpm upon learning that it has exceeded any effluent limitation set forth in paragraph 17 below. Special conditions for operations during the term of the Agreement, Stipulation, and Order are as follows:

1) When process water discharge flows at the No. 6 riser or other Division approved release points are less than or equal to 2,000 gpm and or when a snowmelt bypass occurs, Climax shall:

a) in addition to the permit's monitoring

requirements, perform monthly sampling and analysis of the process water discharge point, the East Fork of Tenmile Creek above the confluence with West Tenmile Creek ("Station 8"), Tenmile Creek below the confluence with West Tenmile Creek ("Station 8a") and Tenmile Creek at the Frisco Bridge ("Station 9"). At each location, analysis is to be for Total Recoverable ("T.R.") copper, T.R. cadmium, Total cyanide, sulfate, T.R. iron, T.R. manganese, T.R. zinc, T.S.S., pH, hardness, and alkalinity; and

b) report and submit the results of the above sampling and analysis with the regular DMRs to the Division.

2) Except during snowmelt bypass, initiation of flow above 2,000 gpm is subject to timely Division approval following submittal of all pertinent information.

a) If the Division approves flows greater than 2,000 gpm, weekly monitoring at locations and for parameters identified in 13(b)(1)(a) of this Agreement, Stipulation, and Order will be required.

b) Any exceedance of the total cyanide water quality standard at Station 9 shall require an immediate reduction in flow sufficient to result in water quality standard compliance. Duplicate samples for total cyanide shall be collected at Station 9 and analyzed sequentially. An exceedance for total cyanide occurs when both sample results are greater than the stream standard of 0.008 mg/l.

c) For any parameter other than total cyanide, two consecutive exceedances of any one parameter of the water quality standard at the Frisco Bridge station shall require an immediate reduction in flow sufficient to result in water quality standard compliance.

d) After any reduction of discharge rate pursuant to paragraph 13(b)(2)(b) or (c) above, Climax shall be entitled to again increase its discharge rate upon establishing to the satisfaction of the Division that the Climax discharge is no longer causing violations of water quality standards, and that existing data indicate that requested increases will not cause exceedances of in-stream water quality standards, as set forth above.

e) The Division shall be verbally advised by Climax within 48 hours of knowledge of any water quality standard exceedance at the Frisco Bridge station and in writing within five (5) working days.

f) Based on the magnitude and cause of any exceedance, as set forth above, the Division shall have authority to restrict the discharge flow rate, to the level of no less than 2,000 gpm.

g) Total cyanide analysis will be completed within 5 working days, but no later than 10 working days from the date of receipt in the lab.

h) Approximate flow reduction associated with water quality standard exceedance shall be determined based on a review of weekly monitoring data and conditions. If twice during the term of the agreement the water quality standards are found to remain in exceedance after flow reduction, future documented exceedances will require flow reduction to no greater than 2,000 gpm.

3) Modification of the treatment system shall be accomplished consistent with the following compliance schedule:

a) From March 1986 to October 31, 1986, Climax will conduct an engineering analysis of the following:

i) Improvement and relocation of a permanent settling pond to Tenmile Tailing Pond.

ii) Relocation to other suitable pond (Robinson Lake, No. 4 Dam).

iii) Selectively treating water (mill vs. mine).

iv) Retention of the demonstration project on the Mayflower tailing pond.

v) If the aforementioned options i) through iv), are inadequate, Climax will consider installing a clarifier at the mill.

b) From August 1, 1986 to December 31, 1986, Climax will conduct detailed engineering of the chosen modification.

c) From November 1, 1986 to December 31, 1986, Climax will obtain material quotations for implementing the chosen modification.

d) From December 1, 1986 to March 15, 1987,

Climax will purchase materials for the modification.

e) Climax will submit to the state its final engineering report on the modification no later than January 15, 1987.

f) Climax's demonstration project will end and the modification will be complete no later than October 1, 1987.

g) Quarterly update status reports will be submitted to the Division on a calendar basis no later than the 28th day of the month immediately following the quarter.

14. Climax estimates that it may expend as much as \$1.6 million in connection with work and construction associated with complying with paragraph 13.

15. The Division and Climax agree that a bypass will be considered an authorized non-snowmelt bypass during the term of this agreement, if all the conditions of paragraph 13 are satisfied, and all conditions of part II.A.2.c(4) of the permit are met.

16. In addition to the work agreed upon in paragraph 13, Climax agrees to do additional work, unrelated to the matters involved in the October 18, 1985 Notice and Order, but as part of this Agreement, Stipulation, and Order and in consideration of the civil penalty as described in paragraph 17:

a. By October 1, 1987, Climax will completely muck out the five Storke Ponds and then grade/reclaim the area consistent with Mined Land Reclamation permit number 77-493.

1) By September 1, 1986, a back up pump for the new Storke pump station shall be installed and operable.

2) At Climax's option, the farthest downstream Storke pond and pump house may be retained after mucking, as an emergency backup for the new Storke pumping station. Climax agrees that if an emergency does occur, the water collected in the pond will be pumped out within 24 hours, and that any solids will be mucked out within two weeks provided, however, that during the months of October through March, mucking may be delayed if weather or site conditions make the site inaccessible.

b. Within two weeks after the effective date of this agreement, Climax will submit a groundwater monitoring program consistent with the provision of the permit. Climax agrees that

one groundwater monitoring well will be located between the toe of the Mayflower tailing pond and the parshall flume and one well between the parshall flume and the property line. Provided that the Division approves Climax's proposed groundwater study program not later than October 15, 1986, provided that weather and site conditions permit, and provided that Climax is able to obtain all necessary permits in a timely fashion, Climax will complete installation of monitoring wells, and commence implementation of the study program, not later than November 15, 1986. Should weather and site conditions preclude well installation by November 15, 1986, installation will be completed by July 1, 1987. The Division agrees that it will not require installation of additional groundwater wells between the date of the stipulation and permit expiration, September 30, 1988, unless groundwater regulations are adopted which impose additional requirements. Within 14 days following the completion and/or installation of various items as listed in this paragraph 16, Climax agrees to submit written verification to the Division. Climax estimates costs involved in complying with paragraph 16 are: \$229,600.

17. The Division agrees to petition the department's executive director or his designee, pursuant to section 25-8-608, C.R.S. (1982) for a civil penalty of \$30,000 against Climax for the October 18, 1985 Notice and Order and will further request that the entire penalty be suspended on the condition that this Agreement, Stipulation, and Order is not violated and/or the significant noncompliance ("SNC") with the 30 day average limitations in the permit does not occur during the terms of this agreement. If conditions of the agreement are violated and/or SNC with the permit occurs during the term of this agreement, the Division may petition the executive director or his designee to impose the full amount of the suspended penalty. Prior to petitioning for imposition of the suspended penalty, the Division shall first serve written notice to Climax stating the provision of the permit and/or this agreement alleged to be violated and the facts supporting the violation. Following such notice, Climax shall have the right to a hearing on said violations if Climax petitions the Division for said hearing within 30 days of notice being served. If Climax fails to request said hearing within 30 days or if the hearing officer upholds the Division's findings in the notice that this agreement has been violated and/or the permit's 30 day average limitations are in SNC, then the Division may petition the executive director or his designee for imposition of the \$30,000 suspended penalty. Climax waives the right to contest the suspended penalty figure of \$30,000. The Division also has the right, following notice and hearing described above, to petition the executive director or his designee for civil penalties on any new permit violations established

by said notice. Climax has the right to appeal the amount of penalty relating to said new violations and may request a hearing before the Water Quality Control Commission within 30 days of the executive director or his designee imposing the penalty. For the purpose of this paragraph, "significant noncompliance" means two exceedances of any of the following limitations for any one parameter in a six-month period; provided, however, that significant noncompliance shall not be deemed to occur during non-snowmelt bypasses as provided in paragraph 15.

SNOWMELT BYPASS:

	30-day average in mg/l
total suspended solids	42
ammonia as N (un-ionized)	0.028
total cyanide	0.18
T.R. cadmium	0.017
T.R. copper	0.160
T.R. lead	0.022
T.R. iron	2.5
T.R. manganese	1.9
T.R. zinc	0.62

ALL SEASONS: (except Snowmelt bypass)

	30-day average in mg/l
total suspended solids	28
ammonia as N (un-ionized)	0.028
total cyanide	0.14
T.R. cadmium	0.014
T.R. copper	0.053
T.R. lead	0.005
T.R. zinc	0.20
T.R. iron	1.2
T.R. manganese	1.2

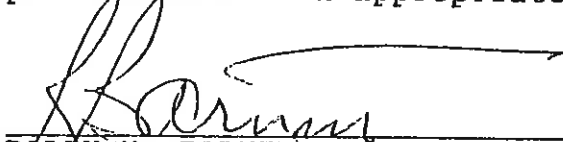
Except as set forth in paragraph 11 above, this paragraph in no way impairs or prohibits the Division from taking independent action for enforcing the terms and provisions of the permit, the Water Quality Control Act, 25-8-101 through 703, C.R.S. (1982 & 1985 Supp.) and regulations promulgated thereto. Thus, the

Division may petition the health department's executive director or his designee to impose the suspended civil penalty if Climax violates this Agreement, Stipulation, and Order, and may also take separate enforcement action.

18. This Agreement, Stipulation, and Order shall become effective upon the signing of the below listed parties and the health department's executive director or his designee imposing the civil penalty as described in paragraph 17.

19. This Agreement, Stipulation, and Order shall be effective for two years from the effective date, or until the date all requirements in paragraph 13 have been met and the Division so advised in writing by Climax and the requirements of paragraph 16 have been met and approved by the Division, whichever date is earlier.


20. The terms of this Agreement, Stipulation, and Order shall constitute the agreed order in this matter as above captioned, which order shall be enforceable by any or all of the parties hereto in appropriate legal proceedings.


RALPH M. BARNETT
Vice President in Charge
of Mines AMAX Inc.


RONALD G. SCHUYLER
Acting Director
Water Quality Control Division

DATE 10-3-86

DATE 10/8/86


RICHARD O. AUSTERMANN
Senior Attorney, AMAX Inc.

DATE October 3, 1986

AG Alpha No. HL WQ HXQS
AG File No. CNR8604853/BD

BEFORE THE DEPARTMENT OF HEALTH
DIVISION OF ADMINISTRATION
STATE OF COLORADO

NOTICE OF VIOLATION AND CEASE AND DESIST ORDER

IN THE MATTER OF: AMAX INC., CLIMAX MOLYBDENUM COMPANY
PERMIT NO. CO-0000248
LAKE COUNTY, COLORADO

TO: AMAX Inc., Climax Molybdenum Company

FINDINGS OF FACT

Pursuant to the authority vested in the Division of Administration Colorado Department of Health ("the division") by 25-8-301 to 308, (1982), which authority has been delegated to me by the executive the department, I hereby make the following findings of fact:

1. Climax Molybdenum Company ("Climax"), a division of operates a molybdenum mine and mill ("the facility") located at CL Colorado.

2. In conjunction with the facility, Climax operates a treatment system ("the treatment system") which is a system that n from several different sources, including but not limited to, mill wastewater, underground mine water, domestic wastewater, and certa and precipitation.

3. The treatment system includes a primary treatment sy tailing ponds") and a supplemental treatment system ("the plant") managed such that there may be a discharge reaching East Fork of 1 Creek ("the creek") from the tailings pond or the plant or both.

4. The discharges reaching the creek described in para; the findings of fact are authorized under the terms and conditions Discharge Permit System permit number CO-0000248 ("the permit") wh issued on December 23, 1983 and is scheduled to expire on Septembe

5. On August 20, September 5, October 9, October 10 and 1979 the Water Quality Control Commission ("the Commission") held hearings for establishment of water quality standards on the creek Climax was a party. The division and Climax jointly recommended standards to the Commission which considered the historic discharge from the Climax facility and provided protection for the beneficial the creek. Numeric standards were adopted by the Commission on Ju and these standards form the basis for the limitations in the per:

6. The permit is further based upon a maximum discharge of 2000 gallons per minute from the plant (except during the period of time whereby snowmelt bypass conditions are in effect), consistent with the information submitted by AMAX at application.

7. The permit specifies effluent limitations which are to be met at all times except for the time period when a snowmelt bypass is occurring whereby other limits apply. The snowmelt bypass is authorized under the permit and consists of direct discharge from the tailings pond to the creek, thus bypassing the plant. The time period for snowmelt bypass is specified in the permit as any contiguous 60 days beginning not earlier than May 1 and ending not later than July 31.

8. In correspondence from Climax to the division dated February 21, 1985, a Climax representative informed the division that Climax planned to begin a non-snowmelt bypass on March 4, 1985. The representative further stated in the correspondence that the treatment system contained a volume of water above average and attributed this to decreased consumptive water use as a result of reduced mill processing, introduction of the McNulty Creek drainage into the treatment system and an increased volume in underground mine water. The correspondence of February 21, 1985 is attached hereto as exhibit A and incorporated herein by reference.

9. The information contained in paragraph 8 constitutes a process modification, according to the permit and requires that AMAX submit a new permit application unless the process modification will not result in effluent limitation violations.

10. To date, AMAX has not submitted a new permit application for the process modification described in paragraph 8 above.

11. On March 14, March 20 and April 9, 1985, a representative of the division sampled the effluent being discharged at outfall 001 which is the authorized discharge point in the permit. The samples were analyzed by the laboratory division of the Colorado Department of Health according to standard testing procedures. The samples were found to contain the following levels of pollutants:

Concentration
in milligrams per liter ("mg/l")

<u>Date of sample</u>	<u>Total suspended Solids ("TSS")</u>	<u>Total recoverable copper</u>	<u>Total recoverable iron</u>	<u>Total recoverable manganese</u>	<u>Total recover zinc</u>
March 14, 1985	K10	0.095	1.4	4.3	0.240
March 20, 1985	36	0.110	2.8	4.5	0.355
April 9, 1985	12	0.027	0.8	3.2	0.130
30-day Average	K19	0.077	1.67	4.0	0.242

K = less than

the effluent at outfall 001 during the non-snowmelt bypass and submitted the analytical results to the division. The following table summarizes the data:

Concentration
in mg/l

Date of sample, 1985	TSS	Total recoverable copper	Total recoverable lead	Total recoverable zinc	Total recoverable iron	Total recovery manganese
March 4	71	0.09	0.009	0.50	4.51	6.21
March 11	55	0.05	0.002	0.28	1.50	5.50
March 14	16	0.07	0.001	0.28	1.43	5.45
March 18	190	0.08	0.001	0.24	1.21	5.21
March 20	39	0.10	0.012	0.33	2.69	5.30
March 24	493	---	---	---	---	---
March 25	K5	0.02	K0.001	0.14	0.07	0.72
April 1	7	0.03	0.011	0.11	0.52	3.22
April 8	127	K0.01	0.008	0.12	0.79	3.48
April 9	6	0.02	0.005	0.15	0.85	3.95
April 15	K5	0.02	0.006	0.18	0.87	3.83
April 22	23	0.02	0.008	0.24	1.93	5.02
April 29	6	K0.01	0.004	0.17	1.07	3.26
May 6	23	0.03	0.003	0.27	1.56	4.22
May 13	K5	0.01	0.003	0.37	1.38	2.86
May 20	9	0.02	0.001	0.41	1.20	2.76
May 30	9	0.01	0.001	0.30	0.78	2.08
March 30-day average	123	0.07	0.0042	0.29	1.9	4.73
April 30-day average	34*	K0.02	0.007	0.16	1.00	3.79
May 30-day average	K11.5	0.017	0.002	0.34	1.23	2.98

*determined by averaging in zero for the April 15 sample

13. According to information submitted to the division by Climax, the average flow to the creek at 001 was 7245 gallons per minute ("gpm") in March, 1985; 10,484 gpm in April, 1985; and 44,099 gpm in May, 1985.

14. On March 6, 1985, Climax met with state representatives regarding the non-snowmelt bypass which began on March 4, 1985. The division informed Climax at the meeting that the non-snowmelt bypass had not been authorized by the division.

15. The creek is "state waters" as defined by C.R.S. 25-8-103(19).

16. Discharge from outfall 001 constitutes discharge from a "point source" as defined by C.R.S. 25-8-103(14).

NOTICE OF VIOLATION

You are hereby notified that the information contained in paragraph 11 of the findings of fact constitutes 12 violations of the permit, as set forth below:

1. The concentration of TSS of 36 mg/l in the effluent on March 20, 1985, exceeds the daily maximum allowed by the permit of 30 mg/l as determined by a single sample.

2. The concentration of total recoverable copper in the effluent on March 14 and March 20, 1985 (0.095 mg/l and 0.110 mg/l respectively) exceeded the daily maximum allowed by the permit of 0.088 mg/l as determined by a single sample.

3. The concentration of total recoverable iron (2.8 mg/l) in the effluent on March 20, 1985 exceeded the daily maximum allowed by the permit of 2.0 mg/l as determined by a single sample.

4. The concentration of total recoverable manganese in the effluent on March 14, March 20, and April 9, 1985 (4.3 mg/l, 4.5 mg/l and 3.2 mg/l respectively) exceeded the daily maximum allowed by the permit of 2.0 mg/l as determined by a single sample.

5. The concentration of total recoverable zinc in the effluent on March 20, 1985 (0.355 mg/l) exceeded the daily maximum allowed by the permit of 0.34 mg/l as determined by a single sample.

6. The average concentration of total recoverable copper in the effluent for samples taken March 14, March 20 and April 9, 1985 (0.077 mg/l) exceeded the 30-day average allowed by the permit of 0.044 mg/l as determined by a minimum of three samples taken in a 30-day period.

7. The average concentration of total recoverable iron in the effluent for samples taken March 14, March 20 and April 9, 1985 (1.67 mg/l) exceeded the 30-day average allowed by the permit of 1.0 mg/l as determined by a minimum of three samples taken in a 30-day period.

8. The average concentration of total recoverable manganese in the effluent for samples taken March 14, March 20 and April 9, 1985 (4.0 mg/l) exceeded the 30-day average allowed by the permit of 1.0 mg/l as determined by a minimum of three samples taken in a 30-day period.

9. The average concentration of total recoverable zinc in the effluent for samples taken March 14, March 20 and April 9, 1985 (0.242 mg/l) exceeded the 30-day average allowed by the permit of 0.17 mg/l as determined by a minimum of three samples taken in a 30-day period.

You are further notified that the information contained in paragraph 12 of the findings of fact constitutes 43 violations of the permit, as set forth below:

10. The concentration of TSS in the effluent on March 4, March 11, March 18, March 20, March 24 and April 8, 1985 (71 mg/l, 55 mg/l, 190 mg/l, 39 mg/l, 493 mg/l and 127 mg/l respectively) exceeded the maximum allowed by the permit of 30 mg/l as determined by a single sample.

11. The concentration of total recoverable copper in the effluent on March 4 and March 20, 1985 (0.09 mg/l and 0.10 mg/l respectively) exceeded the maximum allowed by the permit of 0.088 mg/l as determined by a single sample.

12. The concentration of total recoverable lead in the effluent on March 4, March 20 and April 1, 1985 (0.009 mg/l, 0.012 mg/l and 0.011 mg/l respectively) exceeded the maximum allowed by the permit of 0.008 mg/l as determined by a single sample.

13. The concentration of total recoverable zinc in the effluent on March 4, May 13 and May 20, 1985 (0.50 mg/l, 0.37 mg/l and 0.41 mg/l respectively) exceeded the maximum allowed by the permit of 0.34 mg/l as determined by a single sample.

14. The concentration of total recoverable iron in the effluent on March 4 and March 20, 1985 (4.51 mg/l and 2.69 mg/l respectively) exceeded the maximum allowed by the permit of 2.0 mg/l as determined by a single sample.

15. The concentration of total recoverable manganese in the effluent on March 4, March 11, March 14, March 18, March 20, April 1, April 8, April 9, April 15, April 22, April 29, May 6, May 13, May 20 and May 30, 1985 (6.21 mg/l, 5.50 mg/l, 5.45 mg/l, 5.21 mg/l, 5.3 mg/l, 3.22 mg/l, 3.48 mg/l, 3.95 mg/l, 3.83 mg/l, 5.02 mg/l, 3.26 mg/l, 4.22 mg/l, 2.86 mg/l, 2.76 mg/l and 2.08 mg/l respectively) exceeded the maximum allowed by the permit of 2.0 mg/l as determined by a single sample.

16. The average concentration of TSS in the effluent for the months of March and April, 1985 (123 mg/l and 34 mg/l respectively) exceeded the 30-day average allowed by the permit of 20 mg/l as determined by a minimum of three samples taken in a 30-day period.

17. The average concentration of total recoverable copper in the effluent for the month of March, 1985 (0.07 mg/l) exceeded the 30-day average allowed by the permit of 0.044 mg/l as determined by a minimum of three samples taken in a 30-day period.

18. The average concentration of total recoverable lead in the effluent for the months of March and April, 1985 (0.0042 mg/l and 0.007 mg/l respectively) exceeded the 30-day average allowed by the permit of 0.004 mg/l as determined by a minimum of three samples taken in a 30-day period.

19. The average concentration of total recoverable zinc in the effluent for the months of March and May, 1985 (0.29 mg/l and 0.34 mg/l respectively) exceeded the 30-day average allowed by the permit of 0.17 mg/l as determined by a minimum of three samples taken in a 30-day period.

20. The average concentration of total recoverable iron in the effluent for the months of March and May, 1985 (1.9 mg/l and 1.23 mg/l respectively) exceeded the 30-day average allowed by the permit of 1.0 mg/l as determined by a minimum of three samples taken in a 30-day period.

21. The average concentration of total recoverable manganese in the effluent for the months of March, April and May, 1985 (4.73 mg/l, 3.79 mg/l and 2.98 mg/l respectively) exceeded the 30-day average allowed by the permit of 1.0 mg/l as determined by a minimum of three samples taken in a 30-day period.

You are further notified that the information contained in paragraph 14 of the findings of fact constitutes a violation of Part II.A.2.C.(2). of the permit which states in pertinent part:

- (2) If the permittee knows in advance of the need for a bypass, it shall submit notice, if possible at least ten days before the date of the bypass, to the Division and the Environmental Protection Agency (EPA). The bypass shall be subject to Division approval, and limitations imposed by the Division and EPA.

You are further notified that the information contained in paragraphs 8, 9, 10, 11, 12, 13, and 14 of the findings of fact constitutes a violation of Part II A. 1 of the permit which states:

1. Change in Discharge

All discharges authorized herein shall be consistent with the terms and conditions of this permit. The discharge of any pollutant identified in this permit more frequently than or at a level in excess of that authorized shall constitute a violation of the permit. Any anticipated change in discharge location, facility expansions, production increases, or process modifications which will result in new, different, or increased discharges of pollutants must be reported by submission of a new CDP's application or, if such changes will not violate the effluent limitations specified in this permit, by notice to the State Water Quality Control Division of such changes. Process modifications include, but are not limited to, the introduction of any new pollutant not previously identified in the permit, or any other modifications which may result in a discharge of a quantity or quality different from that which was applied for. Following such notice, the permit may be modified to specify and limit any pollutants not previously limited.

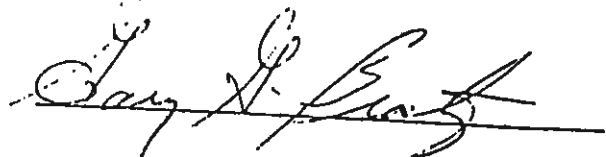
Pursuant to section 25-8-603, C.R.S. (1982), you are required to submit to the division an answer admitting or denying each paragraph of the findings of fact and responding to the notice of violation. Section 603 also provides that the recipient of a notice of violation may request the division to conduct a hearing to determine the validity of the notice, including the findings of fact. Such request shall be filed in writing with the division. Both the answer and the request for hearing, if any, shall be filed no later than 30 days after issuance of this order. The filing of an answer does not constitute a request for hearing. Absent such a request, the validity of the factual allegations and the notice of violation shall be deemed established in any subsequent proceeding. You are also advised that any person who violates any provision of any permit issued under 25-8-101 to 703, C.R.S. (1982) or any provision of 25-8-101 to 703, C.R.S. (1982) or any final Cease and Desist order or clean-up order shall be subject to a civil penalty of not more than \$10,000 per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution of state waters if such discharge is made in violation of any permit issued under 25-8-101 to 703, C.R.S. (1982), or in violation of any Cease and Desist order or clean up order issued by the division. You are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters.

For further clarification of the rights of recipients of notices of violation, including the potential imposition of penalties and possible criminal liability, you are advised to consult the Water Quality Control Act, sections 25-8-101 to 703, C.R.S. (1982 and 1984 Supp.).

Issued at Denver, Colorado, this 18th day of October, 1985.

COLORADO DEPARTMENT OF HEALTH
Division of Administration



GARY G. BROETZMAN
Director
Water Quality Control Division

WANG/D#/8940B

CEASE AND DESIST ORDER

Based upon the foregoing findings of fact and notice of violation, and pursuant to the provisions of 25-8-605, C.R.S. (1982), I hereby order you to:

1. immediately cease and desist all discharges of wastewater into state waters which are in violation of the permit;
2. submit to the division, in writing, within 30 days after issuance of this order, a detailed statement of the measures you have taken or plan to take to achieve immediate and long term compliance with paragraph 1 of this order; include a proposed schedule for projections of water discharge from 001 for the next two years and how the treatment and discharge will be continuously and responsibly managed;
3. submit to the division, in writing, within 15 days after issuance of this order, a detailed characterization of the water quality of McNulty Creek drainage, demonstrating why it is necessary to retain and treat those waters;
4. submit to the division, in writing, within 10 days after issuance of this order a statement of your intent to comply herewith.

CLIMAX MOLYBDENUM

CLIMAX MOLYBDENUM COMPANY

AMAX MOLYBDENUM DIVISION

AMAX INC.

EXTERNAL AFFAIRS

February 21, 1985

CDH Certified Mail No. P 424 752 325
EPA Certified Mail No. P 424 752 326

Mr. Gary Broetzman
Colorado Department of Health
Water Quality Control Division
4210 East Eleventh Avenue
Denver, Colorado 80220

Re: CPDES Permit No. CO-0000248

Dear Mr. Broetzman:

In accordance with Part II A.2.c (2) and (4) of our CPDES Permit CO-0000248, this is our notification of commencement on or about March 4, 1985, of a "non-snowmelt" by-pass from our process water system into the East Fork of Tenmile Creek.

Climax conducts an annual survey of the Mayflower tailing Pond to reconcile the actual volume of the water pool at the beginning of each water year. This provides a new reference point upon which to relate changes to the Mayflower water pool as a result of tailing deposition and dam construction during the ensuing year. In combination with established elevations and capacity curves for Robinson Pond, Robinson Lake and Tenmile Pond, the status of our water management system is thereby monitored on a weekly basis.

The 1984 survey was completed on August 28, 1984. From August 29, 1984, to February 11, 1985, this monitoring shows a net gain in system water pool volume of 2088 AF. On February 11, 1985, the remaining surge capacity was calculated at 2065 AF with about 1/2 of this remaining surge capacity (1230 AF) being on Mayflower Pond.

RECEIVED
FEB 22 1985
WOOD, PERMIT SECTION

RECEIVED
FEB 22 1985
MAYFLOWER

During normal production years we would expect a decrease in the water supply during the winter months. The differences in this water year of 1984-1985 can be attributed to the following:

- 1) Tonnage being processed this year is about 45% of plant capacity. Accordingly, consumptive use by entrainment of water in tailing is reduced.
- 2) We have been diverting McNulty Creek drainage into our system rather than by-passing this drainage via interceptor canal. Runoff from open pit waste rock deposition in McNulty Gulch suggested this alternative as being better from a water quality standpoint. The WATBAL program estimates this additional flow into our system at 1560 AF per year.
- 3) The underground mine water pumped to our system has increased in volume. In 1982, the average rate was 832 gallons per minute. In 1984, this rate has shown an increase to 1,291 gallons per minute. This increase is likely related to the delayed effect of higher than normal precipitation during the winters of 1982 and 1983.

From current measurement data and assuming average snowfall for the remainder of this winter period, our WATBAL program predicts an uninterceptable runoff of some 4700 AF. We believe it prudent to provide additional surge capacity in our system prior to the spring snowmelt period to ensure its manageability in a manner consistent with structural safety considerations.

It is our plan to commence discharge from the Climax Waste Water Treatment Plant on March 1, 1985, at its rated capacity of 2,000 gallons per minute. This plant is currently in operation for the purpose of fine-tuning its performance with the treated water being recycled. On March 4, 1985, we will commence the by-pass of water from the clearwater pond (e.g., decant from Mayflower Pond) at 8,000 gallons per minute. This by-pass will utilize one of the pumps at the Mayflower Pumphouse. The combined discharge will therefore be on the order of 10,000 gallons per minute or 44.2 AF per day. We will continue this by-pass until the onset of the spring snowmelt or until circumstances would warrant earlier termination.

CPDES Permit No. CO-0000248
February 21, 1985
Page 3

We hope for your understanding that we consider this non-snowmelt by-pass as an unavoidable situation to prevent possible loss of life, personal injury or severe property damage. If you have any further questions or requirements, please contact me at this office or John Richards at Climax.

Sincerely,



James C. Gilliland
Director
Environmental Control

JCG/a

cc: D. W. Delcour
P. Godsil-EPA
J. A. Hamman
G. R. Stephan
R. Shukle-CDH
J. T. Richards

COLORADO DEPARTMENT OF HEALTH
Water Quality Control Division
Permits and Enforcement Section

CERTIFICATE OF MAILING

This is to certify that a signed copy of the NOTICE OF VIOLATION
AND CEASE AND DESIST ORDER IN THE MATTER OF AMAX INC., CLIMAX MOLYBDENUM
COMPANY, PERMIT NO. CO-0000248, LAKE COUNTY, COLORADO was deposited in
the U.S. Mail, at Denver, Colorado this 18th day of October,
1985 addressed as follows:

The Corporation Company
Registered Agent for
AMAX, Inc., Climax Molybdenum Company
1700 Broadway
Denver, CO 80290

CERTIFIED MAIL NO. P149900337

Mary Lou
SIGNED

RECEIVED
NOV 15 1985

BEFORE THE DEPARTMENT OF HEALTH

DIVISION OF ADMINISTRATION

STATE OF COLORADO

WATER QUALITY CONTROL
Director's Office

ANSWER TO NOTICE OF VIOLATION

AND REQUEST FOR HEARING

IN THE MATTER OF: AMAX INC., CLIMAX MOLYBDENUM COMPANY

PERMIT NO. CO-0000248

LAKE COUNTY, COLORADO

AMAX Inc., through its undersigned attorneys, hereby responds to allegations set forth in a Notice of Violation issued by the Colorado Department of Health, Water Quality Control Division, on October 18, 1985.

I. RESPONSE TO FINDINGS OF FACT

1. Admit.

2. Admit.

3. AMAX admits that the treatment system at Climax consists of a primary system (the tailing ponds) and a supplemental system (the plant). AMAX denies that this system is operated in such a way that discharges to Tenmile Creek consist solely of discharges from the tailing ponds, the plant, or both. Discharges also include water from interceptor canals.

4. Admit.

5. AMAX admits that the Water Quality Control Commission held hearings in 1979 for the purpose of establishing water quality standards on Tenmile Creek, that AMAX was a party to those proceedings, and that final standards were adopted on June 9, 1980. AMAX challenged these standards. Further hearings were held in 1980 and 1982, the division and AMAX ultimately agreed to a joint recommendation, and on December 6, 1982 the Commission adopted revised standards on the basis of this recommendation. These standards were further modified in 1984. AMAX admits that the 1980 standards, as revised in 1982 and 1984, form the basis for some effluent limitations in the permit. AMAX denies that the standards form the basis for all effluent limitations in the permit. AMAX denies all other allegations contained in paragraph 5 of the Notice of Violation.

6. AMAX admits that "all season" water quality based effluent limitations in the permit were calculated on the assumption that "all season" discharges would be limited to 2000 gallons per minute. AMAX denies, however, that the permit contains any flow limitations.

7. AMAX admits that the time period for "snowmelt bypasses" is specified in the permit as any contiguous sixty days beginning not earlier than May 1, and ending not later than July 31. AMAX denies the remainder of this paragraph.

8. Admit.

9. Deny.

10. AMAX admits that it has not submitted a new permit application. AMAX denies that a new application is required.

11. AMAX is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 11 of the Notice of Violation, and therefore denies the same.

12. Admit.

13. Admit.

14. AMAX admits that it met with state representatives on March 6, 1985, regarding the 1985 nonsnowmelt bypass. AMAX denies that the division informed AMAX, at that time, that it believed AMAX to be in violation of the permit.

15. Admit.

16. Admit.

II. RESPONSE TO NOTICE OF VIOLATION

1. Deny.

2. Deny.

3. Deny.

4. Deny.

5. Deny.

6. Deny.

7. Deny.

8. Deny.

9. Deny.

10. Deny. AMAX also alleges that this paragraph repeats, in part, allegations contained in paragraph 1 of the Notice of Violation, and, to the extent of such repetition, refers to but a single alleged violation.

11. Deny. AMAX also alleges that this paragraph repeats, in part, allegations contained in paragraph 2 of the Notice of Violation, and, to the extent of such repetition, refers to but a single alleged violation.

12. Deny.

13. Deny.

14. Deny. AMAX also alleges that this paragraph repeats, in part, allegations contained in paragraph 3 of the Notice of Violation, and, to the extent of such repetition, refers to but a single alleged violation.

15. Deny. AMAX also alleges that this paragraph repeats, in part, allegations contained in paragraph 4 of the Notice of Violation, and, to the extent of such repetition, refers to but a single alleged violation.

16. Deny.

17. Deny. AMAX also alleges that this paragraph repeats, in part, allegations contained in paragraph 6 of the Notice of Violation, and, to the extent of such repetition, refers to but a single alleged violation.

18. Deny.

19. Deny. AMAX also alleges that this paragraph repeats, in part, allegations contained in paragraph 9 of the Notice of Violation, and, to the extent of such repetition, refers to but a single alleged violation.

20. Deny. AMAX also alleges that this paragraph repeats, in part, allegations contained in paragraph 7 of the Notice of Violation, and, to the extent of such repetition, refers to but a single alleged violation.

21. Deny. AMAX also alleges that this paragraph repeats, in part, allegations contained in paragraph 8 of the Notice of Violation, and, to the extent of such repetition, refers to but a single alleged violation.

22. AMAX denies that it failed to comply with notice of approval requirements in the permit, as alleged in the unnumbered paragraph following paragraph 21 of the Notice of Violation.

23. AMAX denies that any of the alleged facts constitute a change in discharge requiring modification of the permit, as alleged in the second unnumbered paragraph following paragraph 21 of the Notice of Violation.

WHEREFORE, AMAX denies that the admitted facts constitute violations of Permit No. CO-0000248.

III. AFFIRMATIVE DEFENSES

A. FIRST DEFENSE

1. AMAX incorporates herein everything set forth in Parts I and II above.

2. Paragraphs 1 through 21 of the Notice of Violation fail to "state the provision [of the permit] alleged to be violated," as required by C.R.S. § 25-8-602(1).

3. The division therefore lacks jurisdiction over AMAX as to the matters raised therein, and as to such matters, the Notice of Violation and Cease and Desist Order should be dismissed.

B.. SECOND DEFENSE

1. AMAX incorporates herein everything set forth in Parts I, II, and III.A above.

2. The division therefore lacks jurisdiction over the subject matter raised therein, and as to such subject matter the Notice of Violation and Cease and Desist Order should be dismissed.

C. THIRD DEFENSE

1. AMAX incorporates herein everything set forth in Parts I, II, and III.A and B above.

2. The Notice of Violation fails to state a claim for relief, and should therefore be dismissed with the Cease and Desist Order.

D. FOURTH DEFENSE

1. AMAX incorporates herein everything set forth in Parts I, II, and III.A, B, and C above.

2. To the extent that the division has asserted a claim for relief, it is embodied in the Cease and Desist Order which accompanied the Notice of Violation.

3. AMAX has complied with all requirements of the Cease and Desist Order.

4. The dispute is therefore moot, and the Notice of Violation and Cease and Desist Order should be dismissed with prejudice.

E. FIFTH DEFENSE

1. AMAX incorporates herein everything set forth in Parts I, II, and III.A, B, C, and D above.

2. Part II.A.2.c(4) of Permit No. CO-0000248 specifically authorizes AMAX to bypass treatment facilities at Climax, notwithstanding any resultant exceedance of effluent limitations that otherwise would apply.

3. During the period from March 4, 1985 to June 3, 1985, which encompasses all of the alleged permit violations, the Climax facility was engaged in a nonsnowmelt bypass pursuant to the foregoing section of the permit. This bypass was conducted pursuant to the notice set forth as Exhibit A to the Notice of Violation, and the division has never contested any of the matters set forth therein.

4. Since all of the alleged violations were, in fact, authorized by the permit, the Notice of Violation and Cease and Desist Order should be dismissed with prejudice.

F. SIXTH DEFENSE

1. AMAX incorporates herein everything set forth in Parts I, II, and III.A, B, C, D, and E above.

2. AMAX has previously bypassed treatment facilities at Climax for reasons similar to those set forth in Exhibit A to the Notice of Violation.

3. The division has never before objected to such bypasses.

4. The division failed to respond in a timely fashion to the notice set forth in Exhibit A to the Notice of Violation.

5. The division's failure to act constituted de facto ratification and approval of the bypass.

6. Since the division ratified and approved the bypass in question, the Notice of Violation and Cease and Desist Order should be dismissed with prejudice.

G. SEVENTH DEFENSE

1. AMAX incorporates herein everything set forth in Parts I, II, and III.A, B, C, D, E, and F above.

2. AMAX relied to its detriment upon the division's failure to act.

3. The division should therefore be estopped from asserting that AMAX violated its permit, and the Notice of Violation and Cease and Desist Order should be dismissed with prejudice.

H. EIGHTH DEFENSE

1. AMAX incorporates herein everything set forth in Parts I, II, and III.A, B, C, D, E, F, and G above.

2. The division did not purport to withhold approval of the bypass until April 9, 1985, more than a month after it commenced.

3. The division did not commence this action until October 18, 1985, more than four months after termination of the bypass.

4. The division has not explained the reason for such delay.

5. The division's delay has worked to AMAX's disadvantage by preventing the company from pursuing alternative remedies.

6. The Notice of Violation and Cease and Desist Order should therefore be dismissed with prejudice pursuant to the doctrine of laches.

IV. MITIGATING FACTORS

During all of the alleged violations, AMAX was taking all available measures to minimize the impact of its discharges on the environment.

V. REQUEST FOR HEARING

Pursuant to C.R.S. § 25-8-603 and 5 CCR 1002-1, §§ 2.1.4 and 2.1.11, AMAX hereby requests a hearing on the foregoing matters. AMAX estimates that it will take three full days to present its case.

Respectfully submitted this 15th day of November 1985.

AMAX Inc.

By: Richard O. Austermann
Richard O. Austermann (#6854)
Senior Counsel
Environmental Affairs
1707 Cole Boulevard
Golden, Colorado 80401-3293
(303) 231-0250

VRANESH AND RAISCH

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